87-1665

No. ....

In The

Supreme Court of the United States

October Term, 1987

IN RE: CASSIDY LAND
AND CATTLE COMPANY, INC.,

Debtor,

McCARTY RANCH TRUST, *et al.,*

Petitioners,

v.

ROBERT F. CRAIG, TRUSTEE OF
CASSIDY LAND AND CATTLE COMPANY, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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April 1988

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QUESTION PRESENTED

Whether Congress could constitutionally give a non-Article III Bankruptcy Court power and jurisdiction to conduct traditional State-denominated mortgage foreclosures of real property pursuant to the *post-Marathon core proceedings* statute of 28 U.S.C. § 157(b)(2).

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*Respondent.***

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Lynda Cassidy Taylor Logemann, individually and as trustee for the Petitioner, McCarty Ranch Trust, petitions

* All of the parties in the United States Court of Appeals for the Eighth Circuit are listed in the caption, except Lynda Cassidy Taylor Logemann, individually and in her capacity as Trustee of the Petitioner, McCarty Ranch Trust.

** Respondent has no parent companies, subsidiaries or affiliates.

for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A, *infra,* 1a) is reported at 836 F 2d 1130. The opinion of the district court (App. B, *infra,* 9a) is reported at 69 B.R. 649.

JURISDICTION

The judgment of the Court of Appeals was entered January 12, 1988. Timely *Petition for Rehearing* was filed, and was denied on February 10, 1988 (App. C, *infra,* 15a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. *Article III* to the *United States Constitution* provides in relevant part:

> "Section 1. The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior Courts, shall hold their offices

during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."

"Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States—to Controversies between—Citizens or Subjects."

2. 28 U.S.C. § 157(b)(2), the *core proceedings* statute of the *post-Marathon Bankruptcy Amendments and Federal Judgeship Act of 1984,* Public Law No. 98-353, provides in relevant part:

"Core proceedings include, but are not limited to—

(A) Matters concerning the administration of the estate;—

(E) Orders to turn over property of the estate;—

(O) Other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor—relationship—."

STATEMENT

1. In 1982, this Court struck down § 1471(c) of *The Bankruptcy Reform Act of 1978* as an unconstitutional delegation of Article III judicial power to nontenured Article I bankruptcy judges in violation of the separation of powers doctrine. *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982) (*Marathon*); 28 U.S.C. § 1471(c).

Thereafter, the Congress of the United States of America created *The Bankruptcy Amendments and Fed-*

eral Judgeship Act of 1984, Public Law No. 98-353, codified in pertinent part, into 28 U.S.C. § 157(b)(2), the *core proceedings* statute. (*1984 Amendments*).

Thus, the *1984 Amendments* and the pertinent *core proceedings* statute (28 U.S.C. § 157(b)(2)) became the Congressional response to the unconstitutionally fatal § 1471(c) of 28 U.S.C. of *The Bankruptcy Reform Act of 1978.*

The *core proceedings* statute, *supra*, then, attempts to circumscribe, define, and otherwise limit by permissible judicial construction, the traditional powers and jurisdiction that have always been associated with and related historically, functionally, and traditionally to the bankruptcy courts, hopefully, in accord constitutionally, with the mandate of *Marathon.*

2. In 1984, shortly after the passage of the *1984 Amendments*, Respondent-Debtor through its trustee, commenced an adversary action in the United States Bankruptcy Court for the District of Nebraska. The trustee brought, *inter alia*, two real estate mortgage foreclosure actions against Nebraska State privately-owned patented lands involving around 13,500 acres. The two mortgages foreclosed upon, secured loans privately contracted by the Petitioner, the McCarty Ranch Trust with the Respondent, before Respondent went bankrupt. One loan was for $2,123,000.00 and another was for $25,196.13. Both loans were evidenced by promissory notes which the mortgages secured.

After Respondent-Debtor plunged into bankruptcy, the trustee's first and only order of business was to bring these mortgage foreclosure actions, one of which was

against the Petitioner, the McCarty Ranch Trust, which stood in relation to the Respondent-Bankrupt as an innocent private party, not involved in any bankruptcy proceedings itself.

Summary Judgment went in favor of Respondent on March 12, 1985.

About a year later, on or about March 4, 1986, Lynda Cassidy Taylor Logemann, individually on behalf of herself and as the trustee for the Petitioner, the McCarty Ranch Trust, realizing the significance of the Supreme Court's decision in *Marathon*, commenced pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure, a *Motion for Relief from Judgment* of the Decree of March 12, 1985, declaring that pursuant to *Marathon* and the *core proceedings* statute of 28 U.S.C. § 157(b)(2), the judgment was void, and further, the bankruptcy court was without jurisdiction to do mortgage foreclosures pursuant to the *core proceedings* statute of the *1984 Amendments*. This Motion was initially brought in the United States Bankruptcy Court for the District of Nebraska.

In August 1986, the Bankruptcy Judge denied Petitioner's *Motion for Relief from Judgment* holding that the mortgage foreclosures as postured in this factual setting were core proceedings. The Judge then entered *Orders Confirming the Sale* of the 13,500 acres to the trustee of the Respondent-Debtor.

An appeal immediately followed to the United States District Court for the District of Nebraska. The District Court affirmed the Bankruptcy Court on January 30, 1987.

An appeal then followed to the United States Court of Appeals for the Eighth Circuit and the Court of Ap-

peals affirmed the District Court and the Bankruptcy Court on January 12, 1988. (App. A, *infra*, 1a).

Petitioners then filed a *Petition for Rehearing by Panel* in the Court of Appeals, which was denied on February 10, 1988. (App. C, *infra*, 15a).

Believing that the Court of Appeals for the Eighth Circuit has ignored the *Marathon* case as it applies to the *1984 Amendments*, serving as a constitutional check on the *core proceedings* statute of the *1984 Amendments*, Petitioners, the McCarty Ranch Trust and Lynda Cassidy Taylor Logemann, have now come to present this unprecedented case to this preeminent Tribunal as the highest and most final arbiter to determine whether once again, as it did with *The Bankruptcy Reform Act of 1978*, *The Bankruptcy Amendments and Federal Judgeship Act of 1984* and its *core proceedings* statute, complies with the *United States Constitution*.

In particular, Petitioners are concerned whether the legal relationships that this case presents which are identical to those of *Marathon*, were correctly decided by the Court of Appeals. Petitioners are further concerned whether Congress could constitutionally give, a non-Article III Bankruptcy Court, in the *1984 Amendments*, such broad and far-reaching powers and jurisdiction similar to those struck down by *Marathon* in § 1471(c) of 28 U.S.C. of *The Bankruptcy Reform Act of 1978*.

The prodigious powers granted by Congress in the *1984 Amendments* and interpreted by the Court of Appeals in this case leave no doubt that an inferior non-Article III Bankruptcy Court has free rein to collect a pre-petition created State law debt of a non-bankrupt

party *via* a traditionally State-denominated mortgage foreclosure action of privately-owned State patented real property, and as a consequence of this foreclosure, be able to sell this real property, all without constitutional safeguards that only an Article III Court can bestow.

REASONS FOR GRANTING THE PETITION

Nearly eight out of every ten cases reaching the bankruptcy court system, have had as its progenitor, a mortgage foreclosure action. The default upon the debt and the mortgage foreclosure proceeding have, in the usual case, been commenced in State Court before the bankruptcy petition has been filed. Invariably, the bankruptcy court also allows the creditor to finish its mortgage foreclosure, according to State law, outside of the bankruptcy court.

This case involves far-reaching ramifications into the contours and limits of the jurisdictional powers of the Federal bankruptcy system given to it by the *1984 Amendments.* It is a case which will either continue to expand or limit the powers of the bankruptcy courts pursuant to the *core proceedings* statute of the *1984 Amendments.*

The case will also develop a scenario as to the future scope and direction in which the "other" powers enumerated in the *core proceedings* statute will take.

Lastly, this case represents a wresting of the jurisdictional power away from the several States and reposed in them by the lower Federal Courts, not meant by the

framers of the *United States Constitution*, the *Marathon* case and the *1984 Amendments* itself.

I.

National Importance Of The Case

This case involves *Marathon II*. Further, it should be the only bankruptcy case the Supreme Court should hear and determine this Term. The *Petition for a Writ of Certiorari* raises unresolved constitutional and jurisdictional questions under the new *core proceedings* statute of *The Bankruptcy Amendments and Federal Judgeship Act of 1984* of national importance.

In the proper administration of the national bankruptcy system, public policy would mandate that this Court grant certiorari so the national public interest can be free of the ambiguous provisions and interpretations of the *core proceedings* statute which is codified into 28 U.S.C. § 157(b)(2).

II.

Conflict With This Court's Decision In Marathon

This case, decided as it was by the Court of Appeals, is constitutionally at odds with and in contravention of the Supreme Court's decision in *Marathon*.

The *Marathon* case was central to this case in the Court of Appeals and the lower Courts. However, the Court of Appeals ignored *Marathon* and went off on a course and direction far deviant from the teachings of *Marathon*.

The Court of Appeals decided this case upon its own carefully chosen narrow spectrum of facts, instead of the constitutional law that *Marathon* mandates.

The facts chosen by the Appeals Court were that the $2,123,000.00 debt was the sole asset of the bankruptcy estate and that this debt and mortgage were executed in favor of the Respondent-Debtor. Since the Respondent was in bankruptcy, it was all too easy for the Appeals Court to reason that it had the right to collect the debt under the *turn-over* statute of 28 U.S.C. § 157(b)(2)(E).

The Court of Appeals never did decide directly whether bankruptcy courts have jurisdiction to do mortgage foreclosures in the constitutional framework of *Marathon* and the *1984 Amendments.*

In so doing, the Court of Appeals "carved out" to its liking its own unprecedented ruling, creating more havoc, confusion, and ambiguity in a law already shrouded in mystery, than if this case never came before the bench.

What precedential value is the Court of Appeals' ruling when that Court itself said this is a unique case, only to find that it only applies to a very narrow band of cases, maybe one in a million?

If such be the case, the application of the Court of Appeals' decision is relatively worthless; however, it does complement further ambiguity instead of creating a clear precedent for which was the duty of the Court of Appeals and for which this case was first commenced.

III.

Conflict With Other Appellate Decisions

1. *Matter of Wood*, 825 F 2d 90 (5th Cir. 1987). The decision in the case at bar directly conflicts with *Wood*. In a bankruptcy case, a complaint seeking damages and declaratory relief, was brought by one against the Debtors-Wood. The Plaintiff sought to recover stock and monies that Debtors allegedly misappropriated before bankruptcy. The Fifth Circuit Court of Appeals held the suit to be a related, non-core proceeding because it was based upon State created rights instead of rights created by Federal bankruptcy law. The Court held it was simply a State contract action that, had there been no bankruptcy, the case could have proceeded in State Court. The Court of Appeals for the Fifth Circuit further held that the case was a related proceeding because the Plaintiff had not filed a proof of claim and had not invoked the *peculiar* powers of the bankruptcy court. The *Wood* case fits the legal relationships in the case at bar.

2. *In Re Arnold Print Works, Inc.*, 815 F 2d 165 (1st Cir. 1987). The hypothetical factual pattern extrapolated at the beginning of the opinion in *Arnold* leaves no doubt that had that Court been faced with the same facts as the case at bar, the resultant holding of that Court would have had that case within the exact same legal posture of the case at bar with *Marathon*. Therefore, the bankruptcy court, in this case, would have lacked the constitutional power to adjudicate a mortgage foreclosure.

The Court in *Arnold* left no doubt that it clearly understood the legal relationships and holding of *Marathon* when it said:

> "Assume that B, a bankrupt company in the midst of federal bankruptcy proceedings, brings an ordinary State law contract claim against D, a private party, seeking money that D allegedly owed B before B went bankrupt."

This is the exact same situation as Petitioners now present to the Supreme Court.

IV.

The Federal Question Herein Has Not Heretofore Been Specifically Determined By This Court

This writer knows, after considerable research, of no other case previously determined by this Court or now pending, that raises this question of first impression.

CONCLUSION

The *Petition for a Writ of Certiorari* should be granted.

Respectfully submitted,

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APPENDIX A

In re CASSIDY LAND AND CATTLE CO., INC., Debtor

Robert F. CRAIG, Trustee of Cassidy Land and Cattle Co., Inc., Appellee,

v.

McCARTY RANCH TRUST, et al, Appellants.

No. 87-1181.

United States Court of Appeals, Eighth Circuit.

Submitted Sept. 4, 1987.

Decided Jan. 12, 1988.

Trustee brought adversary proceeding to foreclose mortgage held by debtor. The Bankruptcy Court granted summary judgment for trustee, and mortgagors appealed. The United States District Court for the District of Nebraska, Clarence Arlen Beam, Chief Judge, 69 B.R. 649, affirmed and appeal was taken. The Court of Appeals, Ross, Senior Circuit Judge, held that proceeding initiated by debtor to foreclose upon $2,000,000 note secured by mortgage, which constituted sole asset of bankruptcy estate, was core proceeding over which bankruptcy court had jurisdiction to enter final order, in that proceeding initiated by debtor amounted to action based on turn-over of matured debt that was property of estate.

Affirmed.

1. Bankruptcy Key No. 2049

Proceeding initiated by debtor to foreclose upon $2,000,000 note secured by mortgage, which constituted sole

asset of bankruptcy estate, was core proceeding over which bankruptcy court had jurisdiction to enter final order, in that proceeding initiated by debtor amounted to action based on turnover of matured debt that was property of estate. Bankr.Code 11 U.S.C.A. § 542(b); 28 U.S.C.A. § 157(b).

2. Bankruptcy Key No. 2124

Bankruptcy court had authority to appoint receiver in adversary proceeding brought by bankruptcy trustee to foreclose mortgage, for limited purpose of administering mortgaged property pending deposition of foreclosure proceeding.

William J. Rieb, Sioux City, Iowa, for appellant.

Robert Craig, Omaha, Neb., for appellee.

Before HEANEY, Circuit Judge,
ROSS, Senior Circuit Judge, and
BOWMAN, Circuit Judge.

ROSS, Senior Circuit Judge.

This matter arises out of an adversary proceeding brought by Robert F. Craig, in his capacity as trustee for the debtor/appellee, Cassidy Land & Cattle Company, Inc. (Cassidy Land) seeking to foreclose upon certain mortgages held by the bankrupt estate and executed in favor of the bankrupt by the appellant, McCarty Ranch Trust.

On July 19, 1982, appellee filed a petition for voluntary bankruptcy under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* In January of 1982, approximately

six months prior to the initiation of the Chapter 11 proceedings, Cassidy Land transferred to appellants, several thousand acres of ranch land located in the Nebraska sandhills. In return McCarty Ranch Trust executed two notes and mortgages in excess of two million dollars in favor of Cassidy Land. The mortgage instruments provided for acceleration of the entire debt in the event of default. It is undisputed that at the time of the foreclosure proceeding the notes and mortgages were in default.

Subsequently, Robert Craig, as trustee for the bankrupt estate, initiated foreclosure proceedings in the bankruptcy court for the district of Nebraska against McCarty Ranch Trust. The bankruptcy court granted summary judgment in favor of Craig on March 12, 1985 and Craig proceeded with execution on his judgment of foreclosure. The appellant, Lynda Taylor, individually and as trustee for the defendant McCarty Ranch Trust, filed a motion for relief from judgment, claiming that the bankruptcy court was without jurisdiction to conduct the foreclosure proceeding. The bankruptcy court denied Taylor's motion and entered orders confirming the sale. Taylor appealed the decision to the district court for the district of Nebraska, again arguing that the bankruptcy court lacked jurisdiction to conduct the foreclosure proceeding.

Finding that the foreclosure constituted a "core proceeding" within the meaning of 28 U.S.C. § 157(b), the district court, 69 B.R. 649, determined that the bankruptcy court had proper jurisdiction over the foreclosure proceeding and accordingly affirmed the bankruptcy court's ruling. Appeal to this court followed.

Discussion

I.

The initial issue presented by this appeal is whether a bankruptcy court has jurisdiction to conduct the foreclosure of a mortgage which is executed in favor of the bankrupt and which constitutes the sole asset of the bankrupt estate. 28 U.S.C. §§ 1471(a) and (b) of the Bankruptcy Reform Act of 1978 (1978 Act) initially conferred upon federal district courts "original and exclusive jurisdiction of all cases under title 11," and original jurisdiction "of all civil proceedings arising under title 11 or arising in or related to cases under title 11." Section 1471(c) of the 1978 Act then vested in the bankruptcy courts the identical broad grant of jurisdictional authority: "[t]he bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts."

In 1982, the Supreme Court had the opportunity to consider the newly enacted Bankruptcy Reform Act and determined that section 1471(c) unconstitutionally delegated Article III judicial power to nontenured Article I bankruptcy judges in violation of the separation of powers doctrine. *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982) (*Marathon*). In order to meet the challenges of the Supreme Court, Congress amended the 1978 Act by repealing the jurisdictional provisions contained in sections 1471 through 1482 and enacting the Bankruptcy Amendments and Federal Judgeship Act of 1984 (1984 Amendments).

28 U.S.C. §§ 1334(a) and (b) of the 1984 Amendments, confers upon the federal district courts the same jurisdictional authority that they had acquired under sections 1471

(a) and (b) of the 1978 Act; however, there is no longer a provision analogous to former section 1471(c). In contrast to 1471(c), 28 U.S.C. § 157 of the 1984 Amendments does not give bankruptcy courts the full judicial power enjoyed by district courts under section 1334. Instead, with respect to proceedings other than the bankruptcy petition itself, section 157 divides all proceedings into two categories. Subsection 157(b)(1) confers upon bankruptcy judges the power to determine "all core proceedings arising under title 11, or arising in a case under title 11" and to enter appropriate orders and judgments. Subsection 157(c)(1), on the other hand, gives the bankruptcy judge only limited power to hear "a proceeding that is not a core proceeding but that is otherwise related to a case under title 11." The bankruptcy judge may hear such a related proceeding, but the judge may not enter a final judgment or order absent consent by the parties to the bankruptcy court's jurisdiction. 28 U.S.C. § 157(c)(2). Instead, the bankruptcy judge is limited to submitting findings of fact and conclusions of law to the district court for de novo review of matters objected to. *Id.* The distinction between core and noncore proceedings is at the heart of Congress's response to the Supreme Court's ruling in *Marathon.*

Since the enactment of the 1984 Amendments, many courts have sought to interpret its ambiguous provisions, attempting to distinguish between proceedings that "arise in," "arise under" or are "related to" cases under title 11. We make no such comprehensive interpretation of the statute, but instead limit our analysis to the facts of this case.

[1] In the case before us the issue is whether a proceeding initiated by the bankrupt to foreclose upon a two

million dollar note secured by a mortgage, which constitutes the sole asset of the bankrupt estate, is a core proceeding within the meaning of section 157(b).

The statute does not define core proceedings: however, 28 U.S.C. § 157(b)(2) does provide a nonexclusive list of proceedings designated as "core" including two "catch-all" provisions, "matters concerning the administration of the estate," § 157(b)(2)(A), and "other proceedings affecting the liquidation of the assets of the estate," § 157(b)(2)(O). Courts have cautioned against a broad interpretation of these catchall provisions for fear of emasculating the mandate of *Marathon*. *In re Wood*, 825 F.2d 90, 95 (5th Cir.1987). Under a broad reading of section 157(b)(2)(A) and (O), even the state law contract claim at issue in *Marathon* would constitute a core proceeding.

Also enumerated in section 157(b)(2) is a list of more specific provisions, including "orders to turn over property of the estate." § 157(b)(2)(E). A turnover proceeding is defined by the Bankruptcy Code as an action based on "a debt that is property of the estate and that is matured, payable on demand, or payable on order." 11 U.S.C. § 542(b).

The mortgage in the instant case contained an acceleration clause which provided that the entire debt under the note would be due and payable in the event of a default. McCarty Ranch Trust's nonpayment of amounts owing constituted a default within the terms of the mortgage instrument and, therefore, rendered the notefully matured. *See Jones v. Burr*, 389 N.W.2d 289, 293 (Neb.1986) citing *United Benefit Life Ins. Co. v. Holman*, 130 N.W.2d 593,

595-96 (Neb.1964). It follows, then, that the foreclosure proceeding initiated by Cassidy Land amounted to an action based on the turnover of a matured debt that is the property of the bankrupt estate within the meaning of 11 U.S.C. § 542(b). Given that a turnover proceeding is expressly enumerated as a core proceeding under section 157(b)(2)(E), we hold that the bankruptcy court had proper jurisdiction to conduct the foreclosure proceeding.

We note as significant the unique nature of this foreclosure and limit our holding to the facts of this case. A mortgage foreclosure can only be a turnover proceeding within the meaning of section 542(b) when the bankrupt is the holder of the note and mortgage which is sought to be foreclosed. Only then is the mortgage "property of the estate." We distinguish the case before us from the typical foreclosure associated with a bankruptcy proceeding wherein the bankrupt is the party against whom foreclosure proceedings are brought and we do not pass judgment as to whether that type of proceeding is a core proceeding.

We also note as significant the fact that the two million dollar note secured by the mortgage constitutes the sole asset of the bankrupt estate. *See In re Dogpatch U.S.A., Inc.*, 810 F.2d 782, 785 (8th Cir. 1987). Although this fact alone is not determinative of a core proceeding, we note that the prompt collection of these assets is essential to the expeditious administration of the bankruptcy proceeding. *See* 28 U.S.C. § 157(b)(2)(A); *Willis v. Ryan*, 56 B.R. 204, 206 (D.Kan.1986).

II.

[2] Appellant also argues that the bankruptcy court exceeded its authority by appointing a receiver in the foreclosure proceeding. 11 U.S.C. § 105(b) prohibits the bankruptcy court from appointing such a receiver "in a case under this title." The district court rejected appellant's argument reasoning that section 105(b) is inapplicable to the foreclosure proceeding which is not a case under title 11 but instead is an adversary proceeding brought by the trustee to foreclose a mortgage. The power of the bankruptcy judge precluded by section 105(b) of the Bankruptcy Code is the power to appoint a receiver for the estate in lieu of a trustee. *In re Memorial Estates, Inc.*, 797 F.2d 516, 520 (7th Cir.1986). Section 105(b) is not addressed to the power of the bankruptcy court to appoint a receiver at the request of the trustee for the limited purpose of administering the mortgaged property pending disposition of the foreclosure proceeding.

We conclude, therefore, that the bankruptcy court exercised proper authority in appointing a receiver in the foreclosure proceeding.

The judgment of the district court is affirmed.

APPENDIX B

In re CASSIDY LAND & CATTLE CO., INC., Debtor.
Robert F. CRAIG, Trustee of Cassidy
Land & Cattle Co., Inc., Plaintiff,

v.

McCARTY RANCH TRUST, et al., Defendants.
Bankruptcy No. BK 82-1257.

No. CV 86-0-704.

United States District Court, D. Nebraska.

Jan. 30, 1987.

Trustee brought adversary proceeding to foreclose mortgages held by debtor. The Bankruptcy Court granted trustee's motion for summary judgment, and mortgagors appealed. The District Court, Beam, Chief Judge, held that adversary proceeding brought by trustee to foreclose on mortgages constituted "core proceeding," which bankruptcy court could hear and finally adjudicate.

Affirmed.

See also, Bkrtcy., 62 B.R. 93.

1. Mortgages Key No. 386

Mortgage foreclosure action is by nature an equitable proceeding, subject to general equity jurisdiction of federal courts.

2. Bankruptcy Key No. 293(1)

Adversary proceeding brought by trustee to foreclose on mortgages held by debtor constituted "core proceeding," which bankruptcy court could finally determine. 28 U.S.C.A. § 157(b)(3).

See publication Words and Phrases for other judicial constructions and definitions.

3. Mortgages Key No. 467(1)

Bankruptcy statute, which prohibited court from appointing receiver in "case" under Bankruptcy Code, did not prohibit appointment of receiver in adversary "proceeding" brought by trustee to foreclose on mortgages. Bankr.Code, 11 U.S.C.A. § 105(b).

See publication Words and Phrases for other judicial constructions and definitions.

Kennedy, Holland Law Firm, Stuart Paulson, Omaha, Neb., for plaintiff.

D. Lynda Taylor Logemann, Trustee for McCarty Ranch Trust.

William J. Rieb, Sioux City, Iowa, for defendants.

ORDER

BEAM, Chief Judge.

This matter is before the Court on appeal from an order of the Bankruptcy Court for the District of Nebraska entered August 8, 1986, denying Linda Logemann, trustee of the defendant McCarty Ranch Trust's motion for relief from judgment. Upon full review of the record and the materials submitted by the parties, the Court finds that the decision of the Bankruptcy Court should be affirmed.

BACKGROUND

This action arises out of an adversary proceeding brought by Robert F. Craig, as trustee of the debtor Cas-

sidy Land & Cattle Co., Inc., seeking foreclosure of certain mortgages executed in favor of Cassidy by the defendants. The Bankruptcy Court granted Craig's motion for summary judgment on March 12, 1985, and Craig proceeded with execution on his judgment of foreclosure. The appellant, trustee for the defendant McCarty Ranch Trust, then filed a motion for relief from judgment, claiming that the Bankruptcy Court was without jurisdiction to conduct foreclosure proceedings pursuant to state law. The plaintiff had meanwhile sold the property at a public sale and filed a motion for confirmation of the sale. Following separate hearings, the Bankruptcy Court entered orders confirming the sale and denying defendant's motion for relief from judgment. This appeal followed.

DISCUSSION

Appellant relies on the United States Supreme Court's decision in *Northern Pipeline Co. v. Marathon Pipeline Co.*, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982) for the proposition that the Bankruptcy Court did not have jurisdiction to conduct the mortgage foreclosure proceedings at issue. *Marathon* involved the extent to which Article III of the United States Constitution limits the jurisdictional powers of the United States Bankruptcy Courts. In regard to the constitutional ability of an adjunct Bankruptcy Court to determine state law issues, a divided Supreme Court was "unable to agree on the precise scope and nature of Article III's limitations. The Court's holding in [Marathon] establishes only that Congress may not vest in a non-Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law, without con-

sent of the litigants, and subject only to ordinary appellate review." *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 105 S.Ct. 3325, 3335, 87 L.Ed.2d 409, *citing Marathon*, 458 U.S. at 84, 102 S.Ct. at 2878. *Marathon* did not "implicate the jurisdiction of the Bankruptcy Courts in other matters within the 'traditional' bankruptcy jurisdiction." *In re Kaiser*, 722 F.2d 1574, 1580 (2d Cir.1983). Chief Justice Burger explained the limitations of the *Marathon* plurality:

> I write separately to emphasize that, notwithstanding the plurality opinion, the Court does *not* hold today that Congress' broad grant of jurisdiction to the new bankruptcy courts is generally inconsistent with Article III. . . . Rather, the Court's holding is limited to the proposition stated by Justice Rehnquist in his concurrence in the judgment—that a 'traditional' state common-law action, not made subject to a federal rule of decision, and related only peripherally to an adjudication of bankruptcy under federal law, must, absent consent of the litigants, be heard by an 'Article III court' if it is to be heard by any court or agency of the United States.

Marathon, 458 U.S. at 92, 102 S.Ct. at 2882 (Burger, C.J., dissenting).

[1] In arguing that *Marathon* precludes the Bankruptcy Court from conducting a foreclosure, it may be that the appellant fails to recognize a basic characteristic of a mortgage foreclosure proceeding. A mortgage foreclosure action is by nature an *equitable* proceeding, subject to the general equity jurisdiction of the federal courts, following principles and rules of practice established by courts of equity in the exercise of their general jurisdiction. *See, e.g., Tilden v. Beckmann*, 203 Neb. 293, 278 N.W.2d 581

(1979); *Wittwer v. Dorland,* 198 Neb. 361, 253 N.W.2d 26 (1977); *Lincoln Joint Stock Land Bank v. Barnes,* 143 Neb. 58, 8 N.W.2d 545 (1943). While this Court does not here find that every proceeding in equity is outside the *Marathon* holding, *Marathon* does not effect the Bankruptcy Court's power to exercise jurisdiction over "core proceedings," especially those proceedings which are equitable in nature.

> Cases that can be properly characterized as 'core proceedings' are those which are considered equitable in nature and for which traditionally no right to a jury trial exists. [citations omitted.] Bankruptcy judges are free to hear and finally determine such cases because they are in the nature of an equitable proceeding.

Cameron v. Anderson, 50 B.R. 175, 180 (Bankr.N.D.1985).

[2] Further, any determination that a proceeding is or is not a core proceeding is not to be "made solely on the basis that its resolution may be affected by State law." 28 U.S.C. § 157(b)(3). The foreclosure of mortgages held by the debtor involves questions which not only concern the administration of the estate and the liquidation of its assets, but the determination of the extent and validity of certain liens. *Shell Materials, Inc. v. First Bank of Pinellas County,* 50 B.R. 44, 46 (Bankr.M.D.Fla.1985). Such foreclosures, initiated by the trustee to recover property for the bankruptcy estate, can hardly be regarded as being "related only peripherally" to the adjudication of the bankruptcy. As such, the Court finds these proceedings to be core proceedings, directly related to the adjudication of the bankruptcy and equitable in nature, fully within the jurisdiction of the Bankruptcy Court. The Bank-

ruptcy Court, therefore, properly held that, regardless of *Marathon*, it has jurisdiction regarding equitable actions to aid the trustee in gathering assets and determining the extent and priority of liens. The Bankruptcy Court correctly denied appellant's motion for relief from judgment.

[3] The appellant additionally argues that the Bankruptcy Court was without jurisdiction to appoint a receiver in this case.[1] Appellant relies on 11 U.S.C. § 105(b) which prohibits the Bankruptcy Court from appointing a receiver "in a case under this title." *Id.* Section 105(b) is not applicable to these facts. A receiver was not appointed in the "case" below, but in an adversary proceeding brought by the trustee to foreclose a mortgage. A bankruptcy case and a bankruptcy proceeding are separate and distinct, and while a receiver may not be appointed in lieu of a trustee for the estate, one certainly may be appointed pursuant to applicable state law in an adversary proceeding. *In re Memorial Estates, Inc.*, 797 F.2d 516, 520 (7th Cir.1986). The Bankruptcy Court's appointment of a receiver here was within its jurisdiction and proper under the circumstances.

Accordingly,

IT IS ORDERED that the decision of the Bankruptcy Court should be and hereby is affirmed.

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1. This issue was raised below only during oral argument on the trustee's motion for confirmation of sale. While the Court finds it doubtful that the issue was properly preserved for appeal in connection with the motion for relief from judgment, the issue can and will be easily disposed of on the merits.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 87-1181NE

In Re: Cassidy Land and Cattle Co., Inc., Debtor	)
Robert F. Craig, etc., Appellee,	) Appeal from the United States District Court for the District of Nebraska.
vs.	)
McCarty Ranch Trust, et al., Appellants.	)

Appellants' petition for rehearing has been considered by the Court and is denied.

February 10, 1988

Order entered at the Direction of the Court:

/s/ Robert D. St. Vrain
Clerk, U.S. Court of Appeals,
Eighth Circuit.

/s/ LP

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
JUDGMENT

No. 87-1181NE

	) Filed Jan. 12 1988) Robert D. St. Vrain) Clerk
In Re: Cassidy Land and Cattle Co., Inc., Debtor	))
Robert F. Craig, Trustee of Cassidy Land and Cattle Co., Inc.,	) Bk. 82-1257) Cv. 86-0-704) Appeal from the) United States) District Court
Appellee,	) for the District) of Nebraska
vs.	) Filed) District of
McCarty Ranch Trust, et al.,	) Nebraska) at ———— M
Appellants.	) Feb 22 1988) William L. Olson,) Clerk) By ————) Deputy

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is ordered and adjudged that the judgment of the district court in this cause be affirmed in accordance with the opinion of this Court.

January 12, 1988

Appellee will recover from appellant the sum of $80.50 for taxable costs on appeal.

A true copy.

/s/ Robert D. St. Vrain

ATTEST:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT
MANDATE ISSUED 2/18/88

(8)

No. 87-1665

In The

Supreme Court of the United States

October Term, 1987

IN RE CASSIDY LAND
AND CATTLE COMPANY, INC.,
Debtor,

McCARTY RANCH TRUST, *et al.*,
Petitioners,

v.

ROBERT F. CRAIG, TRUSTEE OF
CASSIDY LAND AND CATTLE COMPANY, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF RESPONDENT ROBERT F. CRAIG IN OPPOSITION

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19 PP

QUESTION PRESENTED

Should this Court grant certiorari for a case in which the lower court did not need to decide a constitutional issuie and correctly decided the case on statutory grounds?

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No. 87-1665

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BRIEF OF RESPONDENT ROBERT F. CRAIG IN OPPOSITION

The respondent, Robert F. Craig, respectfully requests that this Court deny the petition for a writ of certiorari.

REASONS WHY CERTIORARI SHOULD BE DENIED

While petitioner attempts to cast this case as one representative of a multitude of bankruptcy cases which involve debtors who are forced into bankruptcy due to a

creditor's filing of a mortgage foreclosure action, such characterization is totally inaccurate. Petition for a writ of certiorari, at 7, *In re Cassidy Land and Cattle Co., Inc.*, No. 87-1665. The simple fact is that the case below was the reverse of the typical situation as was specifically noted by the Eighth Circuit and involving nothing more than a trustee's going about the duties of collecting up the assets of a bankruptcy estate for distribution to creditors.

In this case, the only assets of any significance which belonged to the estate were two promissory notes secured by mortgages on approximately 12,500 acres of Nebraska ranch land which had, until approximately six months before the case was filed, belonged to the debtor. Shortly after his appointment, the trustee initiated actions in the United States District Court seeking to recover the ranch land as having been fraudulently conveyed to trusts established for the benefit of the debtor and the debtor's principals in an attempt to remove the 12,500 acres of ranch land from the estate and the claims of creditors. The alternative theories of recovery were that those transfers were in consideration of the notes and mortgages received by the debtor which would then be subject to foreclosure. The case presented to the court was, alternatively, either a classic turnover proceeding under 11 U.S.C. § 542(b) dealing with a mature debt or a fraudulent conveyance subject to avoidance under 11 U.S.C. § 548.

Contrary to petitioner's suggestion that this case presents legal relationships identical to those which were before this Court in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982) the instant case involved stipulated facts establishing the debtor-creditor relationship between the plaintiff and the defen-

dant, the maturity of the debt, the validity of the mortgages and the amounts due. There was no need for the court to make any adjudications of state law issues other than the core bankruptcy function of adjusting debtor-creditor rights.

1. The case is not of national importance.

The Eighth Circuit decided this case on the narrow grounds that the bankruptcy court had jurisdiction pursuant to 28 U.S.C. § 157(b)(2)(E) to conduct a mortgage foreclosure action. The circuit court was careful to limit its holding to the unique facts of this case. *In re Cassidy Land and Cattle Co., Inc.*, 836 F.2d 1130, 1132 (8th Cir. 1988). There was no comprehensive interpretation of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 ("the 1984 Amendments"). *Id.* Because there was no comprehensive construction of the 1984 Amendments to the Bankruptcy Code, but only a narrow interpretation of 28 U.S.C. § 157(b)(2)(E), this case does not present an issue of national importance.

The lower court declined to make a comprehensive constitutional review of the 1984 Amendments as there was no need to do so. First, the case presented only one simple statutory issue regarding the turnover powers of the trustee. The lower court easily concluded that the turnover authority of the trustee encompassed the mortgage foreclosure lawsuit and was within the bankruptcy court's proper jurisdiction. *Id.* at 1133. Secondly, it is a well recognized rule of law that "[f]ederal statutes are to be so construed as to avoid serious doubt of their constitutionality." *International Association of Machinists v. Street*, 367 U.S. 740, 749 (1961). Given the fact that an

action for an order "to turnover property of the estate" is well within the traditional jurisdiction of a bankruptcy court, there was no need for the court of appeals to find 28 U.S.C. § 157(b)(2)(E) unconstitutional.

2. The court of appeal's decision is not in conflict with this Court's decision in Northern Pipeline.

Initially it should be recognized that the trustee's action seeking a turnover order for assets of the estate would have passed constitutional scrutiny prior to passage of The Bankruptcy Act of 1978, Pub. L. 95-598, 92 Stat. 2549, and the 1984 Amendments. In *Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478, 481 (1940) it was stated, "Bankruptcy courts have summary jurisdiction to adjudicate controversies relating to property over which they have actual or constructive possession." An action for a turning over of property of the estate, already within the constructive possession of the bankruptcy court, was clearly within the traditional bankruptcy court jurisdiction prior to the enactment of The Bankruptcy Act of 1978.

28 U.S.C. § 1471 (e), prior to the 1984 Amendments, gave the bankruptcy court exclusive jurisdiction over all property of the debtor. "Property of the debtor" would include mortgages owned by the debtor (now property of the estate) and in need of collection by the trustee's foreclosure action.

Consequently since the Eighth Circuit's decision would have been correct both before and after *Northern Pipeline* was decided, there is no need to consider this case for review because it would require reversal of settled law.

In a post-1984 Amendments world the *Cassidy* decision is still correctly decided. The answer lies in the historic jurisdiction of the bankruptcy court when compared to the facts of this case.

Congress' response to *Northern Pipeline* was the 1984 Amendments. The legislative history, and the terms used within the statute, reflect Congress' intentions to craft a statute mirroring the Court's language in *Northern Pipeline.*

For example, 28 U.S.C. § 157 uses the terms "core" and "non-core" as the dividing mechanism between those actions which are within the traditional bankruptcy court jurisdiction and those which may be submitted to the district court for judgment. *See* 28 U.S.C. § 157(d). The source of the use of the terms "core" and "non-core" is the plurality's decision in *Northern Pipeline.* In *Northern Pipeline* Justice Brennan ruled that, "the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power, must be distinguished from the adjudication of state-created private rights. . . ." 458 U.S. at 71.

Congress was acutely aware of this Court's decision in *Northern Pipeline* when drafting the 1984 amendments. One of the bill's co-sponsors identified core proceedings as those "integral to the core bankruptcy function of restructuring debtor-creditor rights. . . ." 130 Cong. Rec. E1109 (daily ed. March 20, 1984) (statement of Rep. Kastenmeier). The non-core type lawsuits were identified in debate as being "Marathon-type suits" "concerned only with State law issues that did not arise from the core bankruptcy function of adjusting debtor-creditor rights." 130 Cong. Rec. H1848 (daily ed. March 21, 1984) (state-

ment of Rep. Kindness). Congress, therefore, in drafting the 1984 Amendments was following the Court's distinction between the type of lawsuits which can be adjudicated by Article I bankruptcy judges and those which must be decided by Article III judges.

In *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568 (1985) and *Commodity Futures Trading Commission v. Schor*, 478 U.S. 833, 106 S.Ct. 3245, 92 L.Ed. 2d 675 (1986) this Court had further opportunity to explain the scope of its holding in *Northern Pipeline*. *Thomas* instructs that *Northern Pipeline* simply means that Congress may not vest in a non-Article III court the power to adjudicate traditional state law cases. 473 U.S. at 584. *Schor* viewed *Northern Pipeline* as an example of the application of a balancing test for analysis of Article III issues. The *Schor* court also considered the historic jurisdiction of Article III courts to have an important bearing on whether a particular matter may be decided by someone other than an Article III judge. 92 L.Ed. 2d at 695.

The conclusion that can be drawn from *Northern Pipeline*, *Schor*, *Thomas* and such lower court cases as *In re Wood*, 825 F.2d 90 (5th Cir. 1987) and *In re Arnold Printworks, Inc.*, 815 F.2d 165 (1st Cir. 1987) is that the focus of the constitutional analysis should be on the nature of the bankruptcy adversary proceeding. If the lawsuit involves adjudication of the peculiar rights attendant with the filing of a bankruptcy petition, then a bankruptcy court has the constitutional jurisdiction to decide the case.

There can be no doubt that collection of property of the estate is a fundamental aspect of the restructuring of the debtor-creditor relationship. As such, any turnover proceeding commenced by the trustee pursuant to 28

U.S.C. § 157(b)(2)(E) is properly a "core proceeding." Therefore, the bankruptcy court had jurisdiction to permit the trustee to collect property of the bankruptcy estate within the meaning of 11 U.S.C. § 542(b).

As an aside, it should be noted that lower courts that have comprehensively examined the constitutionality of the 1984 Amendments have found it constitutional. *In re Earle Industries, Inc.*, 71 B.R. 919, 925 (Bankr. E.D. Pa. 1987). *In re Production Steel, Inc.*, 48 B.R. 841, 846 (M.D. Tenn. 1985); *In re Tom Carter Enterprises, Inc.*, 44 B.R. 605, 609 (C.D. Cal. 1984).

3. 28 U.S.C. § 157 is not a jurisdictional statute, but one of procedure, whose constitutionality was not timely challenged and properly appealed.

A fatal flaw to the petitioner's case is that she did not timely raise her claim of the unconstitutionality of 28 U.S.C. § 157(b)(2). The summary judgment granting the mortgage foreclosure was March 12, 1985. Petitioner filed a Fed. R. Civ. P. 60(b)(4) motion to void the judgment based upon the bankruptcy court's purported lack of jurisdiction almost one year later. Petition for writ of certiorari, at 5, *In re Cassidy Land and Cattle Co., Inc.*, No. 87-1665. The only way this late collateral attack against the judgment would be permissible is if the summary judgment was void for lack of jurisdiction.

The petitioner's argument was, and is, that 28 U.S.C. § 157(b)(2) is unconstitutional because it vests jurisdiction to collect assets of the estate in the bankruptcy court. The problem with the argument is that 28 U.S.C. § 157(b)(2)

is a statute of procedure and not of jurisdiction.[1] 28 U.S.C. § 1334 is the jurisdictional statute. It generally provides that the district court has, "original but not exclusive jurisdiction of all civil proceedings arising under title 11 . . ." *Id.* at (b). Therefore the petitioner had to challenge the constitutionality of the procedural statute (28 U.S.C. § 157) within thirty days of March 12, 1985 or be forever barred from raising the issue. *Yakus v. United States,* 321 U.S. 414, 444 (1944); Fed. R. App. P. 4; 16 C.J.S. *Constitutional Law* § 93.

Admittedly the jurisdictional qualifications of a lower federal court is always subject to review by this Court. *Chicago B. & Q. Ry. Co. v. Willard,* 220 U.S. 413, 419 (1911). However, as long as the questioned statute does not on its face deal with jurisdiction, its constitutionality must be raised at the first opportunity by the pleadings in the lower court and be preserved by a timely appeal; not collaterally attacked one year after judgment. *See Stembridge v. Georgia,* 343 U.S. 541, 544 (1952).

It is further submitted that the petitioner has waived any right to challenge the constitutionality of 28 U.S.C. § 157 as a jurisdictional statute. *Schor* controls. In *Schor* customers of a commodity futures broker filed a repara-

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[1]28 U.S.C. § 157 is procedural because the district court may refer title 11 cases to its adjunct the bankruptcy court. 28 U.S.C. §§ 151, 157(a). The district court may withdraw the case or proceeding from the bankruptcy court. 28 U.S.C. § 157(d). *See In re Associated Grocers of Neb. Coop., Inc.,* 62 B.R. 439 (D. Neb. 1986). The whole scheme of 28 U.S.C. § 157 deals with how the district court having original jurisdiction shall handle the procedure of which cases it may hear or which cases its adjunct, the bankruptcy court, may hear.

tions proceeding with the Commodity Futures Trading Commission. The customers later objected to the adjudication of state law counterclaims by an administrative agency whose officers were not Article III judges. The objection was raised, however, after the customers had already received the decision of the administrative law judge. 92 L.Ed.2d at 684. The Court found this conduct to be an indisputable waiver of any right to trial before an Article III court. *Id.* at 691.

In the case at bar petitioner sought and received a nine month stay from sale of the foreclosed property. Neb. Rev. Stat. § 25-1506 (Reissue of 1985); Appendix. This affirmative benefit conferred upon the petitioner prevents her from later claiming that the bankruptcy court was without constitutional jurisdiction to decide the case. If the petitioner had truly desired to raise and preserve her constitutional objections to the bankruptcy court's jurisdiction she would not have requested the stay.

4. There is no conflict among the circuits as to the constitutionality of 28 U.S.C. § 157(b)(2)(E).

Petitioner states that *In re Wood* and *In re Arnold Printworks, Inc.* present conflicting constructions of 28 U.S.C. § 157 with the case at bar. The statement is wrong.

In re Wood is distinguishable based upon its facts. In *Wood* the plaintiff sued the debtor for wrongfully issuing additional shares of stock. The plaintiff alleged that he and the defendant had an agreement to be equal shareholders in a professional corporation. 825 F.2d at 91. The cause of action was essentially for an accounting or unjust enrichment.

The Fifth Circuit correctly held that the action was a non-core proceeding because the lawsuit did not invoke any substantive rights provided by Title 11. *Id.* at 97.

The plaintiff in *Wood,* unlike the respondent in the case at bar, was not attempting to collect property of the bankruptcy estate. Hence there is no similarity between the case at bar and *Wood*.

In re Arnold Printworks, Inc. held that a lawsuit to collect post-petition damages arising from the sale of the debtor's equipment was a core case because it involved the administration of the estate. 815 F.2d at 167. The jurisdictional basis of the First Circuit's decision was 28 U.S.C. § 157(b)(2)(A).

Neither *Wood* or *Arnold Printworks, Inc.* construed the same statute that the Eighth Circuit did in the case below. For that reason there is no conflict among the courts of appeal.

5. The petitioner has failed to comply with the rules of this Court.

The petitioner makes an ostensible claim of the unconstitutionality of 28 U.S.C. § 157(b)(2). Supreme Court Rule 28.4(b) requires that the petitioner's initial pleading cite 28 U.S.C. § 2403(a) and that there be service of the brief upon the Solicitor General. Neither of these requirements has been fulfilled.

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CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Attorney for Respondent

APPENDIX

IN THE UNITED STATES
BANKRUPTCY COURT ASKA [sic]
FOR THE DISTRICT OF NEBRASKA

ROBERT F. CRAIG, Trustee of Cassidy Land & Cattle Co., Inc.	)	CASE NO. BK 82-1257 A 83-483
Plaintiff,	)	
vs.	)	MOTION TO STAY
McCARTY RANCH TRUST, et al,	)	
Defendants.	)	

Comes now the Defendant, McCarty Ranch Trust, and request the order of sale of the mortgaged premises be stayed for nine months from the date of the decree entered herein as provided by § 25-1506 R.R.S. Neb. 1943.

McCARTY RANCH TRUST,
Defendant,

By /s/ E. Dean Hascall
\# 11736
Attorney for the Defendants
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Bellevue NE 68005
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